HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Descrip tion of the case.

F.A No. 216 of 2001

State of U.P. through
Collector, Pithoragarh and another
VS
Gopal Singh Matiyani

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 18.8.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

RESERVED

First Appeal No. 216/2001 (No.641/2000 Old no.)

State of U.P. through
Collector, Pithoragarh and another .....Appellant

Vs.

Gopal Singh Matiyani ……Respondent

Date of delivery of Judgment :- 18.8.2004

Hon'ble Rajesh Tandon, J.

Heard Sri Bhupendra Singh, learned Standing Counsel.

By the present appeal, the appellant has challenged the order dated 21.2.1995 passed by the then District Judge, Pithoragarh in original suit no.25/1998, wherein the District Judge has dismissed the plaintiffs' suit on the ground that the same was barred by time.

Brief facts giving rise to the present appeal are that the plaintiffs-appellants have filed a suit for recovery of Rs. 7,280/- with interest @ 16% per annum amounting to Rs. 15,142.40 and for other amounts, total Rs.28,225.58. The plaintiffs have set up their case that the defendant in a public auction dated 28.10.1974 has purchased lot no. 59/74-75 of Range Pithoragarh Jarapani of compartment no.5 of the forest wood for a sum of Rs. 10,200/- out of which RS. 1,020/- was paid by the defendant as earnest money and rest of the money was to be paid in four installments for Rs.2550/- each. But the defendant has committed the breach and did not deposit any amount due towards him. Due to negligence of the defendant, the plaintiffs suffered a loss to the tune of Rs. 7,280/-.

The defendant has contested the suit. He has admitted that he had purchased the wood in question of lot no. 59/74-75 for Rs. 10,200/- and also stated that he had deposited a sum of Rs. 1020/- by way of earnest

money. However, the entire wood sold to him was not re-sold and therefore he was not liable to make good the loss so caused to the plaintiffs.

The trial court has framed the following issues:-

1) Whether in the second lot no. 48/76-77, only 44 trees out of 88 trees earlier auctioned in the first lot no. 59/74-75, were auctioned by the plaintiff, if so, its effect?

2) Whether after the auction of the first lot and before the auction of the second lot during the intervening period, the defendant was in possession of the trees, if so its effect?

3) Whether the defendant did not deposit the auction money relating to lot no. 59/74-75 in Jarapani Compartment no.5 as per terms and conditions of the sale and agreement? If so, its effect?

4) Whether the suit is barred by the principle of res judicata?

5) Whether the suit is barred by time?

6) Whether the plaintiff is entitled to recover the auction money alongwith interest thereon at the market rate from the defendant? If so its effect?

7) To what relief, if any, is the plaintiff entitled?

With regard to issue no.4 mentioned above, the finding was recorded that the suit was not barred by the principles of res judicata and the issue was decided against the defendant respectively. So far as the issue no.1, 2 & 3 are concerned, the finding was recorded that there is no cogent evidence to prove that in the second lot bearing no. 48/76-77, only 44 trees out of 84 earlier was auctioned first lot of 59/74-75 were auctioned by the plaintiffs. It was also not proved that after auction of the first lot and

before the auction of the second lot during the intervening period, the defendant was in possession of the trees in question. In fact, the wood in question was sold to the defendant and he was authorized to take possession of the entire wood sold to him which he did not remove and intentionally committed breach of trust. However, the trial court has recorded the findings on issued no. 5 with regard to the limitation against the plaintiff. The suit was instituted by the plaintiff for the recovery of loss on account of resale of wood in question, which was admittedly purchased in public auction for a sum of Rs.10,200/- in respect of lot no. 59/74-75. He admitted that he had deposited a sum of Rs.1020/- by way of earnest money but he could not work on that agreement and no heed was paid, thereafter the plaintiff started recovery of the said amount of difference. Earlier, the defendant filed a civil suit before the learned Munsif, Pithoragarh to the effect that the amount of compensation or loss, if any, should not be recovered as arrears of land revenue. The said suit was numbered as civil suit no. 1/1980 and the suit was dismissed. Against that judgment and decree an appeal was filed which was numbered as Civil Appeal No. 6/1980 and the said appeal was allowed wherein it has been held that the amount in question can not be recovered from the defendant as arrears of land revenue.

The trial court has considered the statement of Sri Hem Chandra Pande (PW-1) wherein it has been clearly stated that the wood which was earlier sold and on which the defendant could not work, got damaged during the period on which the defendant failed to work and this is how the remainder which was found on the spot was in the shape of 42 trees, and it was resold. The defendant has failed to prove that the wood of the earlier lot was damaged by the employees of the forest department. The wood in question got damaged due to the fact that it was lying from the period of first auction upto the period of second auction.

Article 27 and Article 55 of the Limitation Act deals with the compensation for breach of any contract.

The operative portion of the Limitation Act is quoted below:-

Article 27:- *For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.*	*Three years*	*When the time specified arrives or the contingency happens.*
Article 55*:-For compensation for the breach of any contract, express or implied not specially provided for.*	*Three years*	*When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occur or (where the breach is continuing) when it ceases.*

The suit has been filed by the plaintiff for recovery of the loss caused to the plaintiff on account of resale of the wood in question, which was admittedly purchased by the defendant in public auction for a sum of Rs. 10,200/- i.e. Lot No.59/74-75. Subsequently, it was resold on a price of Rs.1900/- only. The defendant's appeal having been allowed on 30.9.1981 the suit has been filed after a period of seven years, the said suit is therefore barred by time and the trial court has rightly held that that suit was barred by time.

It has been held in **AIC 2003 (3) between I. C. of Agricultural Research Vs. R. B. S. College (Allahabad H.C.)** to the following effect:-

"When there is a conflict between law and equity it is the law which is to prevail, in accordance with the Latin maxim 'dura lex sed lex,' which means, 'the law is hard but it is the law'.

Taking into consideration the relevant provisions of the Limitation Act which provides the limitation for the recovery of breach of any contract, the trial court has rightly held that the suit was barred by time.

I find no force in the appeal and the same is dismissed. No order as to costs.

(Hon'ble Rajesh Tandon, J.)

Dated 18.8.2004

Rawat